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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Case No.: 2:19-cv-01904-GMN-VCF

JUDY DOE NO. 1, an individual; JUDY DOE  
NO. 2, an individual; JUDY DOE NO. 3, an  
individual; JUDY DOE NO. 4, an individual;  
JUDY DOE NO. 5, an individual; JUDY DOE  
NO. 6, an individual; JUDY DOE NO. 7, an  
individual; JUDY DOE NO. 8, an individual;  
and JUDY DOE NO. 9 an individual,  
Plaintiff,

v.

WYNN RESORTS, LIMITED, a Nevada  
corporation; WYNN LAS VEGAS, LLC, a  
Nevada limited-liability company; et al.  
Defendants.

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT WYNN RESORTS,  
LIMITED'S:**

- (1) MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT [ECF NO. 118]; OR**
- (2) IN THE ALTERNATIVE, JOINDER  
TO DEFENDANT WYNN LAS  
VEGAS, LLC'S MOTION TO  
DISMISS PLAINTIFFS' SECOND  
AMENDED COMPLAINT [ECF NO.  
119]**

**HEARING REQUESTED**

The nine Plaintiffs, JUDY DOEs Nos. 1-9 ("Plaintiffs"), hereby oppose Defendant Wynn Resorts, Limited's ("Wynn Resorts Ltd") (1) motion to dismiss Plaintiff's Second Amended Complaint [ECF No. 118]; (2) the alternative joinder to Defendant Wynn Las Vegas, LLC's motion

1 to dismiss Plaintiffs’ Second Amended Complaint [ECF No. 119.]<sup>1</sup> This opposition is based on the  
 2 following memorandum of points and authorities, the pleadings and papers on file, the attached  
 3 exhibits, and any oral argument the Court may wish to entertain.

#### 4 MEMORANDUM OF POINTS AND AUTHORITIES

#### 5 **I. INTRODUCTION**

6 **“You are Wynn Resorts.”**

7 April 3, 2018 Memorandum from Matt Maddox, CEO of Wynn Resorts Ltd to “All Employees,”  
 8 including the Judy Doe Plaintiffs. Emphasis added. **Exhibit 1**, MGC 0288.

9 Despite this clear proclamation, one of many by parent company officials, once again, the two  
 10 named Wynn corporate entities (Wynn Resorts Ltd and Wynn Las Vegas, LLC) have filed a motion  
 11 to dismiss the parent corporation from this discrimination, retaliation and tort suit. And once again,  
 12 without allowing discovery, without competent supporting evidence and in the face of overwhelming  
 13 admissions and public proclamations of being **the “Company”** which operates world famous hotels  
 14 and casinos known simply as The Wynn (since 2005) and The Encore (since 2008) where Plaintiffs  
 15 work, Wynn Resorts Ltd is now arguing that is merely the “indirect parent company” of Wynn Las  
 16 Vegas, LLC. In the face of numerous alleging paragraphs detailing the involvement of Steve Wynn  
 17 and other parent company executives, Defendant Wynn Resorts Ltd claims to be uninvolved in any  
 18 meaningful way with the Plaintiffs’ employment and the injuries which occurred in their Wynn  
 19 Resorts workplace. ECF No. 118 at pp. 1-2.

20 In contrast, the existing evidence, Defendants’ own, some of which is described and some  
 21 attached to the Second Amended Complaint, compels a conclusion otherwise. Wynn Resorts Ltd’s  
 22 submissions to the EEOC, to Massachusetts gaming authorities, and the fines imposed by gaming  
 23

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24  
 25 <sup>1</sup> This opposition addresses the specific arguments in Wynn Resorts Ltd’s motion [ECF Nos. 118-  
 26 119], which involve Wynn Resorts Ltd’s allegation that it is not Plaintiffs’ employer and is “not a  
 27 proper party to this action.” Because Wynn Resorts Ltd’s joinder to Wynn Las Vegas, LLC’s motion  
 28 to dismiss Plaintiff’s Second Amended Complaint does not include any additional substantive  
 arguments but merely incorporates by reference Wynn Las Vegas, LLC’s arguments, Plaintiffs’  
 opposition to Wynn Resorts Ltd’s joinder incorporates by reference the arguments that Plaintiffs set  
 forward in their separate opposition to Wynn Las Vegas, LLC’s motion.

1 authorities demonstrate and compel a conclusion that this is not a mere parent/subsidiary relationship.  
 2 This should preclude this Court from dismissing either of the two defendants at this early pleading  
 3 stage.

4 These dismissal arguments belie common sense and the manner in which these companies  
 5 operated. The Company<sup>2</sup> and its world-famous casino and hotel were known as The Wynn. They were  
 6 built, managed, and lived-in by its owner, billionaire casino mogul Steve Wynn. Wynn Resorts Ltd's  
 7 corporate governance and operational documents demonstrate over and over that Steve Wynn and the  
 8 high-ranking management members he selected, promoted and oversaw completely controlled all the  
 9 hotel operations of The Wynn and Encore Hotels and Casinos, and thus are responsible for the terms  
 10 and conditions of employment of all employees (including the Judy Doe Plaintiffs). The oppositional  
 11 arguments are summarized below

12 First, Wynn Resorts, Ltd's motion to dismiss [ECF No. 118] argues in a conclusory fashion  
 13 that Wynn Resorts, Ltd is not technically Plaintiffs' employer as if that, and that alone, were sufficient.  
 14 ECF No. 118 at p. 2. It is not.

15 While Wynn Las Vegas, LLC may be the entity issuing paychecks to the Judy Doe Plaintiffs,  
 16 there is a "singular identity" between the parent Wynn Resorts, Ltd and subsidiary Wynn Las Vegas,  
 17 LLC in the operation of the resort hotel and casino where Plaintiffs work. This singularity is best  
 18 illustrated in the explanations and charts found in the 3/15/19 Massachusetts Gaming Commission's  
 19 *Investigative Report*,<sup>3</sup> based on the Defendants' mandated disclosures to Massachusetts gaming  
 20 authorities. These admissions amply illustrate the close interconnection of the parent and subsidiary  
 21 companies in the way parent company employees and management officials (all selected, promoted  
 22 and overseen by founder Steve Wynn prior to February 2018) controlled and operated the  
 23 subsidiaries, in particular The Wynn and Encore Hotels. ECF No. 106 at ¶ 11-12. The Second  
 24 Amended Complaint and this, this opposition properly relies on those documents, along with other  
 25 undisputed evidence which demonstrates that Wynn Resorts, Ltd and Wynn Las Vegas, LLC should  
 26

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27 <sup>2</sup> Which is how Mass gaming regulators referred to Wynn empire. Ex. 12, pages MGC 0016- 0018

28 <sup>3</sup> See Ex. 12 at MGC 0016-0018, 0028-0029, 0217-0218, and footnotes on Exs. 7 and 9.

1 be treated as one singular employer-corporation, and both should remain defendants in this lawsuit.

2 Second, alternatively, this case also presents a classic example of the well-settled Title VII  
3 concept of “joint employer,” developed over the years to allow the protections of Title VII to attach  
4 as broadly as possible, as Congress intended. Those protections and that breadth encompass an  
5 employer’s obligation to provide employees such these Plaintiffs, then and now, with a safe,  
6 discrimination and retaliation-free workplace, regardless of the corporate structure of their employer.  
7 Defendant Wynn Resorts, Ltd argues that because the Judy Doe Plaintiffs did not specifically use the  
8 term “joint employer” in their Second Amended Complaint (even though they set forth specific facts  
9 setting forth the joint employer relationship) they are barred, at this stage, from asserting the protection  
10 of a joint employer relationship in this Title VII litigation. ECF No. 118 at p. 4. That position is  
11 not supported by any legal authority.

12 Third, Defendant Wynn Resorts, Ltd’s sole evidentiary support for dismissal is its bare  
13 assertions about corporate structure by two employees of the subsidiary, Wynn Las Vegas, LLC. First,  
14 Alisha Balee, as Executive Director of Legal for Wynn Las Vegas, LLC, simply declares that Wynn  
15 Resorts, Ltd and Wynn Las Vegas, LLC “maintain separate legal existences from each other.” ECF  
16 No. 118-1. Then, Courtney Prescott, as Executive Director of Human Resources for Wynn Las Vegas,  
17 LLC, simply declares that Wynn Resorts, Limited has not been the employer of any person working  
18 as a manicurist or makeup artist at The Salon at Wynn or The Salon at Encore. ECF No. 118-2.

19 While Ms. Balee and Ms. Prescott may be competent to attest to the authenticity of specific  
20 corporate documents and corporate records of the subsidiary, both of their declarations lack any  
21 indication of their knowledge or competency to speak about the actual operational interrelationship  
22 and actual interaction between the parent defendant (Wynn Resorts, Ltd) employees and the subsidiary  
23 defendant (Wynn LV, LLC). Nor do their declarations address the control exercised within and  
24 among those corporate entities and their structures, nor the commonality of corporate actors, the  
25 existence or issuance of policies by the parent applicable and enforced in the subsidiary workplace,  
26 nor the control of subsidiary actors by parent company actors or between and among persons who  
27 occupy positions of power and control within those structures or entities, such as that once wielded  
28 by, for example, the now disgraced CEO and Chairman of the Board Steve Wynn. These declarations

are not sufficient to defeat the joint employer concept.

Defendant Wynn Resorts Ltd's motion to dismiss should be denied in its entirety, or alternatively, Plaintiffs should be allowed to conduct discovery on these matters and these fact-intensive issues left for summary judgement and trial.

## **II. RELEVANT CORPORATE HISTORY AND BACKGROUND**

The Massachusetts Gaming Commission's Investigative Report provides a plethora of evidence about the intimate interrelationship between Wynn Resorts, Ltd and its subsidiary Wynn Las Vegas, LLC, past and present. That report charts the common set of actors, the most powerful of whom sat atop the parent company, and who exercised control over both entities during the time that the Judy Doe Plaintiffs were being discriminated and retaliated against in their Wynn Resorts (Hotel and Casino) workplace while being issued paychecks by the subsidiary company.

Wynn Resorts, Ltd submitted a "Company Employee List" to Massachusetts Gaming regulators, which clearly demonstrate that many top Wynn executives had job titles and occupying positions where they exerted control over both Wynn Resorts, Ltd and Wynn Las Vegas, LLC. **Exhibit 2**, "Company Employee List." For example, Matt Maddox is listed as the President of Wynn Resorts, Ltd (since 2013) as well as its CEO and CFO, following Steve Wynn's resignation in 2018) On April 3, 2018, Mr. Maddox issued a memorandum (in his capacity as CEO of Wynn Resorts, Ltd) to "All Employees" in which the Wynn "company" is referred to as a single entity:

Although it has only been a couple of weeks since you heard from me at our Town Hall meetings, I want you to be current with the changes and updates in our company. As you may know, Steve Wynn is no longer associated with Wynn Resorts. Mr. Wynn sold all of his shares in the company last week, primarily to two investment funds that I arranged to purchase the shares. . . . Clearly, now more than ever, our brand is you. **You are Wynn Resorts.**

Ex. 1 (emphasis added). His memo went on to state that a Special Committee of the Board of Directors of Wynn Resorts Ltd would be "conducting an investigation with the assistance of outside counsel into allegations regarding Mr. Wynn and reviewing Wynn Resorts' internal policies and procedures." *Id.* In other words, Mr. Maddox was admitting that Wynn Resorts, Ltd's internal policies and procedures apply to "all employees," including those who were issued paychecks by Wynn Las Vegas, LLC – meaning including Plaintiffs.

1 Similarly, it was the board of Wynn Resorts, Ltd that issued “Resolutions” following the  
 2 January 26, 2018 publication of the *Wall Street Journal* article which exposed Steve Wynn’s  
 3 workplace misconduct. **Exhibit 3**, MGC 0290-0292. Those Resolutions created a (parent company)  
 4 Special Committee to review, investigate, and make recommendations to the (parent company) Board  
 5 about the allegations of systemic sexual harassment in the Wynn workplace, the very workplace (The  
 6 Wynn and Encore Hotels) where the Plaintiffs were employed!

7 Wynn Resorts officials made numerous presentations to Massachusetts gaming regulators to  
 8 convince them to allow still another Wynn-related subsidiary to open a hotel and casino in  
 9 Massachusetts after those gaming regulators conducted a year-long investigation triggered by the *Wall*  
 10 *Street Journal* and other media stories about Steve Wynn’s wrongdoing and corporate cover-ups in  
 11 Nevada. For example, on 6/8/18, Kirkland & Ellis made a presentation to the Massachusetts gaming  
 12 regulators about how Wynn Resorts as a (singular) “Company” had implemented “significant  
 13 workplace compliance and culture enhancements to reinforce its commitment to maintaining a safe,  
 14 supportive, empowered, and diverse workplace.” **Exhibit 4**, MGC 0303-0322. These changes  
 15 included a Wynn Resorts Ltd Revised Code of Business Conduct and Ethics which included “Spa and  
 16 Salon Specific Initiatives,” covering the very salon where the Judy Does worked. *Id.* This presentation  
 17 also indicated that “employees may report directly to Audit Committee members” – i.e. directly to  
 18 parent company (Wynn Resorts Ltd) employees. *Id.* at MGC 0317. Further, the “Proposed Workplace  
 19 Oversight Council Structure” indicated that the new reporting structure went all the way up to the  
 20 Wynn Resorts Ltd Board. *Id.* at MGC 0321. These were parent-entity re-assurances to gaming  
 21 regulators that all subsidiary activities were being strictly controlled and overseen by parent company  
 22 officials in a new way to prevent what had happened in the past.

23 Next, in The Wynn’s new policy on “Preventing Harassment and Discrimination” policy,  
 24 updated on January 18, 2019, all employees of Wynn Las Vegas, LLC (which would include the Judy  
 25 Doe Plaintiffs) are told that they can make complaints about harassment or discrimination directly to  
 26 Ellen Whittemore, the Executive Vice President and General Counsel of the defendant-parent  
 27 company, Wynn Resorts Ltd, or to Rose Huddleston, Sr. Vice President of Human Resources for  
 28 North America of Wynn Resorts, the parent company. **Exhibit 5**, MGC 0324-0328. A flow chart

1 was also provided which re-iterated the close interconnection of the two companies by showing that  
2 employee complaints were to be considered and sent to the “VP of HR” and “Legal,” both of whom  
3 are Wynn Resorts, Ltd employees when that is cross-referenced with the Preventing Harassment and  
4 Discrimination Policy. **Exhibit 6**, MGC 0330. As set forth in the Second Amended Complaint and  
5 the Massachusetts Gaming Commission’s Investigative Report, the “Company” had been severely  
6 deficient in not having these protections in place to prevent the alleged Steve Wynn sexual predation  
7 and toleration of it by parent and subsidiary executives and officials, most of whom reported to him  
8 prior to February 6, 2018. Ex. 12, MGC 006-0018.

9 The (undated) Wynn “Permitted Disclosure Policy” submitted to Mass Gaming about  
10 employees’ rights to file charges with federal, state or local agencies includes an oft-repeated  
11 footnote found on nearly every policy issued to Wynn employees in the electronic employee  
12 handbook. On a page that carries the brand-characteristic “**Wynn**,” the parent company states, to these  
13 employees and the world, that parent and subsidiaries are one and the same:

14 As used herein, the use of the term “Wynn” refers to Wynn Resorts, Limited, Wynn Las  
15 Vegas, LLC (which includes Wynn Las Vegas and Encore at Wynn Las Vegas), Wynn MA,  
16 LLC, Wynn Design and Development, LLC, and their affiliated companies with operations  
17 based in the United States. This Policy applies to all employees of Wynn, unless otherwise  
18 prohibited by the applicable laws of the jurisdiction in which the company is operating.

19 **Exhibit 7**, MGC 0332. In other words, the Wynn empire of entities regularly acts as one single unit  
20 when addressing employee issues such as harassment complaints.

21 Similarly, the policy dealing with “Personal Relationships and Potential Conflicts of Interest”  
22 was also presented by Wynn Resorts representatives to Mass Gaming. It uses the collective term  
23 “Wynn’s Rights,” in describing the Company’s policy on dating, relative, cohabitating, and intimate  
24 relationships and disclosures which to be made. Tellingly, there was no distinguishing between parent  
25 company and subsidiary rights. **Exhibit 8**, MGC 0334-0336.

26 Another example of the interconnections of parent actors exercising operational and  
27 management control over subsidiary activities can be found in a Memo dated May 18, 2018 from Kim  
28 Sinatra, General Counsel of the parent, Defendant Wynn Resorts Ltd. On the subject of “Executive  
and Board Member Use of Spa and Salon Services,” Ms. Sinatra’s directive states that “Wynn



employees, board members, and their families may not receive massages or other spa services at any Wynn Resorts property.” **Exhibit 9**, MGC 0344. That memo includes the oft-repeated stock footnote indicating that the term “Wynn” means Wynn Resorts, Ltd, Wynn Las Vegas, LLC, and all affiliated companies and operations based in the U. S. *Id.*

Still another example is found in Wynn Resorts Ltd’s Compliance Plan, dated August 3, 2018. It shows involvement of parent entity (Wynn Resorts, Ltd) in matters at the subsidiary level (Wynn Las Vegas, LLC) for various human resources and discrimination matters through a new, supposedly improved compliance process. The compliance officer (at the property level, i.e. the subsidiary) reports to a global level officer, at the parent corporate level with further reports being made up from the property level to the parent board level. **Exhibit 10**, MGC 0346-0347.

Finally, still another policy issued by the parent company which applies at the subsidiary level is Wynn Resorts Ltd’s “Employee Interaction with Guest and Other “Wynn believes in maintaining a safe and friendly environment for both its guests and employees.” **Exhibit 11**, MGC 0362. And once again, the term “Wynn” is used and defined by the parent corporation in a footnote as including Wynn Resorts, Ltd, Wynn Las Vegas, LLC, and all their affiliated companies and operations based in the United States. *Id.*

For additional context, the Wynn Resorts Ltd Organizational Chart confirm that numerous subsidiaries, including Wynn Las Vegas, LLC, all report upwards to Wynn Resorts Ltd. **Exhibit 12**, Title Page, Contents, Executive Summary and Org Chart, MGC 006-018. **Exhibit 13** is a chart depicting the 1/1/2020 corporate filings with the Nevada Secretary of State, showing a series of single managing member LLC’s eventually controlled by the parent, Wynn Resorts Ltd.

Similarly, and perhaps most tellingly, are the parent company’s filings with EEOC. Attached as **Exhibit 14** (EEOC (SS) 051) is the 2016 EEO-1 Report filed by and for the parent company, Wynn Resorts Ltd. The company identification is **WYNN RESORTS LTD**, and shows that 11,550 employees<sup>4</sup> are employed at the company’s location at 3131 Las Vegas Blvd. South, Las Vegas, NV,

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<sup>4</sup> 195 of whom are “Executive/Sr Official & Mgrs.” No doubt discovery will show those are individuals holding positions in the parent company.



1 the locations of the Wynn Hotel and Casino and the Encore Hotel and Casino. It makes no mention  
2 of a subsidiary LLC.

3 These corporate documents directly counter Wynn Resorts Ltd's attempt to characterize itself  
4 as an uninvolved parent and distance itself from the actual operation of the resort hotel and casinos  
5 (The Wynn Hotel and The Encore Hotel) where the Judy Doe plaintiffs were employed (and where  
6 six of them still work).

7 Following the explosive revelations, in January 2018 of years of Steve Wynn's sexual  
8 predation at The Wynn and Encore Hotels, the parent corporation Wynn Resorts Ltd issued new  
9 corporate governance documents promising the heavy involvement and participation of officials and  
10 officers from the parent level in the operation of the subsidiary (property level). These were provided  
11 to gaming regulators to reassure them that the highest echelons of Wynn Resorts Ltd (including its  
12 Board of Directors) had implemented changes to rectify past deficiencies which led to the Steve  
13 Wynn-misconduct towards employees and years of corporate facilitation, toleration and cover-up.  
14 These are the very grounds (wrongdoing) which give rise to this lawsuit.<sup>5</sup>

15 Even beyond and before the corrective actions in parent company documents submitted to  
16 Mass Gaming in 2018 and 2019, , there was a long and documented history of executive and officials  
17 of Wynn Resorts Ltd moving around and through the parent and subsidiary entities<sup>6</sup> and all the while,  
18 exerting control over "Wynn Resorts" employees (who may have been paid by Wynn Las Vegas,  
19 LLC) over the years. Examples include:

- 20 • Matt Maddox testifying before the Massachusetts Gaming Commission that he became  
21 president of Wynn Resorts Ltd (in 2013) because he was chosen by Steve Wynn as his (Steve  
22 Wynn's) possible successor as CEO, that he and Wynn Resorts Ltd General Counsel Kimmarie

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23  
24  
25 <sup>5</sup> Indeed, that parent company control power as exercised by Steve Wynn is perhaps best exemplified  
26 by Board member Patricia Mulroy (the only female Board member in February, 2018,) testifying that  
27 on the day of his resignation (Feb. 6, 2018,) the disgraced Steve Wynn made a recommendation of  
28 Matt Maddox as his successor as parent company CEO and president, which was accepted. Ex. 15,  
4/3/19 Adjudicatory Hearing, pgs 171-172.

<sup>6</sup> See Exhibit 2, MGC 0217-0218, " Company [singular]Employee List"

1 Sinatra were “running the company,” and that before Steve Wynn left in February 2018, the  
 2 three of them were the “triumvirate” of the Wynn company. **Exhibit 15**, 4/3/19 Adjudicatory  
 3 Hearing Transcript at pp. 200-208;

- 4 • When (then-Wynn Resorts, Ltd Board member) Elaine Wynn received information about  
 5 Steve Wynn paying a settlement to a Wynn Hotel (subsidiary) employee who alleged that he  
 6 raped her, she went to Wynn Resorts, Ltd General Counsel Kimmarie Sinatra in 2009 to “tell  
 7 her about it in her capacity as general counsel.” Ex. 12 at MGC 0092;
- 8 • Kevin Tourek, who served as the the subsidiary’s SVP and General Counsel from 2006-2014,  
 9 then the parent’s (Wynn Resorts, Ltd) Global Compliance Officer from 2014-2016 , and then  
 10 as the parent’s Project Manager/Legal Advisor in 2018, and Kimmarie Sinatra, who served as  
 11 the Wynn Resorts Ltd General Counsel, were both put on notice of potential workplace  
 12 wrongdoing by Steve Wynn against Wynn Las Vegas, LLC employees in 2014, yet they  
 13 “failed to take any action or require any sort of investigation into the matter.” Ex. 12 at MGC  
 14 0113;
- 15 • In 2014-2015, Maurice Wooden (then-president of Wynn Las Vegas) put Wynn Resorts, Ltd  
 16 President Matt Maddox on notice of a complaint regarding Steve Wynn engaging in  
 17 inappropriate conduct against a Wynn spa employee, with Mr. Maddox apparently  
 18 “instruct[ing] Mr. Wooden to instruct Mr. Wynn to discontinue the conduct,” which is direct  
 19 evidence of Wynn Resorts, Ltd ultimately controlling the sexual harassment complaints being  
 20 lodged by Wynn employees. Ex. 12 at MGC 0114;
- 21 • Wynn Resorts Ltd General Counsel Kimmarie Sinatra attended the depositions of Wynn Las  
 22 Vegas, LLC employees (including Doreen Whennen who served as the Wynn Las Vegas VP  
 23 of Hotel Operations from 2004-2006). Ex. 12 at MGC 0147;
- 24 • In October 2017, Steve Wynn (then CEO of the parent Wynn Resorts Ltd) testified that he  
 25 wanted to change the “Zero Tolerance” policy on sexual harassment applicable to employees  
 26 working at the Wynn and the Encore Hotels (such as the Judy Doe Plaintiffs). Ex. 12 at MGC  
 27 0150-156;
- 28 • Wynn Resorts Ltd’s General Counsel Kimmarie Sinatra participated in drafting the Wynn

Company's response to sexual harassment allegations being asserted by employees working at the Wynn and Encore that the *Wall Street Journal* was publishing in January 2018. Ex. 12 at MGC 0157; and

- In a statement provided to the Massachusetts Gaming Commission after the publication of the January 2018 Wall Street Journal article, Steve Wynn refers to having conversations with "Company Employees" in 2005, which including Doreen Whennen (who was then the VP of Hotel Operations for Wynn Las Vegas, LLC – not an employee of Wynn Resorts, Ltd), and Artie Nathan (who was then the SVP and Chief HR Office of Wynn Las Vegas, LLC – not an employee of Wynn Resorts Ltd). Ex. 12 at MGC 0177.

### III. LEGAL ANALYSIS

#### A. LEGAL STANDARD FOR MOTION TO DISMISS

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the claims asserted in the complaint. Fed.R.Civ.P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court must accept all factual allegations pleaded in the complaint as true and must construe them and draw all reasonable inferences from them in favor of the nonmoving party. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir.1996). To avoid a Rule 12(b)(6) dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

Generally, courts should not consider material outside the complaint when ruling on a motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir.1990). However, documents specifically identified in the complaint whose authenticity is not questioned by parties may also be considered. *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n. 1 (9th Cir.1995) (superseded by statutes on other grounds). Moreover, the court may consider the full text of those documents, even when the complaint quotes only selected portions. *Id.* It may also consider material properly subject to judicial notice without converting the motion into one for summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir.1994). As a general rule, a court is to grant

1 leave to amend a complaint which has been dismissed, which is what has happened in this case on  
2 reversal and remand from the Ninth Circuit.

3 **B. WYNN RESORTS LTD IS A TITLE VII “JOINT EMPLOYER” OF PLAINTIFFS**

4 Title VII (and its corollary Nevada law) impose obligations and responsibility on “employers”  
5 to refrain from discrimination and retaliation. 42 U.S.C. § 2000e-2(a). Title VII does not define the  
6 term “employer” beyond “a person engaged in an industry affecting commerce who has fifteen or  
7 more employees ... and any agent of such a person.” 42 U.S.C. § 2000e(b).

8 The Ninth Circuit recently reversed a district court’s partial dismissal and denial of discovery  
9 on the issue of joint employers under Title VII. *U.S. Equal Employment Opportunity Comm’n v. Glob.*  
10 *Horizons, Inc.*, 915 F.3d 631 (9th Cir. 2019). “It is now well-settled that an individual can have more  
11 than one employer for Title VII purposes,” where they “simultaneously share control over the terms  
12 and conditions of employment, both should be liable for discrimination.” (internal citations omitted).  
13 Two entities, in such circumstances, are deemed to be “joint employers” of the employees in question.  
14 *Id.* at 637. The Ninth Circuit held that the common-law agency test should be used to determine  
15 whether a joint employer relationship exists. Under the common-law test, “the principal guidepost”  
16 is the element of control — that is, “the extent of control that one may exercise over the details of the  
17 work of the other.” *Id.* at 639. Citing to the U.S. Supreme Court’s decision in *Nationwide Mutual*  
18 *Insurance Co. v. Darden*, 503 U.S. 318, 324 ((1992), as providing and a non-exhaustive list of factors  
19 to be considered, the Ninth Circuit held that “all incidents of the relationship must be weighed with  
20 no one factor being decisive.” Tellingly, this is generally done at the summary judgment stage, not at  
21 this dismissal stage.

22 Wynn Resorts, Ltd is attempting to distance itself from being responsible for the Title VII  
23 violations allegedly committed only by the (single-employer) subsidiary. It does so simply by insisting  
24 it has never been the “employer of any person who works at, or has worked at, The Salon at Wynn or  
25 The Salon at Encore.” ECF No. 118-2. As indicated below, this is not where the analysis ends.

Over fifty paragraphs<sup>7</sup> in Plaintiffs' Second Amended Complaint allege facts, as Plaintiffs know, observed, or experienced them, or as admitted to by Wynn Resorts Ltd in gaming enforcement actions, which speak to the total operational control that the parent corporation Wynn Resorts Ltd exercised over in the Plaintiffs' Wynn and Encore Salon workplace. These include numerous examples of acts and omissions of parent company "high level executives," including parent CEO Steve Wynn and his personally selected management team and even Board members acting in that workplace. Discovery will no doubt uncover more examples. Plaintiffs' Second Amended Complaint asserts that the parent company, Wynn Resorts Ltd, acting through its board members, officers (including Board Chair and CEO Steve Wynn and his hand-picked executives in both entities) was a fully involved and active participant in controlling nearly all of the terms and conditions of Plaintiffs' employment.

Further bolstering this fact-intensive inquiry and also important to note is that it was Wynn Resorts Ltd which was held responsible by gaming regulators (ECF No. 106 at ¶ 68, 82) for the failure to properly prevent, investigate and remedy the workplace misconduct of Board Chair and CEO Steve Wynn **in the Plaintiffs' workplace**. These were the actions and omissions of Wynn Resorts Ltd which first allowed, failed to investigate and thereby ratified the Steve Wynn misconduct and which Plaintiffs are now asserting resulted in an illegal and hostile work environment when exposed in the media. ECF No. 106 at ¶ 282. That the parent company, Wynn Resorts Ltd may not have been the entity issuing Plaintiffs their paychecks is not dispositive when the parent entity (Wynn Resorts Ltd) involvement is examined.

The determinative issue (which the motion does not mention) is the extent to which Wynn Resorts Ltd exercises control over the terms and conditions of Plaintiffs' employment. This includes, as Plaintiffs have alleged, that Wynn Resorts Ltd employed unqualified, poorly-trained individuals who allowed parent company Board Chair and CEO Steve Wynn to prey upon Wynn Salon and Encore Salon employees, including Plaintiffs and their co-workers. *See, e.g.* ECF No. 106 at ¶ 34,

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<sup>7</sup> ECF No. 106 at ¶¶ 21, 22, 28, 32, 33, 34, 39, 40, 49, 52, 54, 55, 56, 57, 58, 62, 66, 68, 69, 70, 72, 74, 75, 77, 79, 80, 82, 83, 84, 89, 90, 282, 292, 297, 301, 304, 305, 306, 315, 321, 322, 323, 326, 337, 338, 341, 342, 343, 344, 345, 346, 354, 355, 356, 357, 360, 361, 362, 369, 370, 372, 373, 385, 386, 390 as examples.

1 288.

2 Plaintiffs' Second Amended Complaint asserts that it was Wynn Resorts Ltd that employed,  
3 selected, and ultimately controlled the people who in turn ran The Wynn and Encore Hotels. Wynn  
4 Salon and Encore Salon employees were victimized and subjected to a hostile work environment by  
5 parent company actors, which goes directly to the principal guidepost of control. *See* ECF No. 106 at  
6 ¶ 11. Plaintiffs' Second Amended Complaint asserts, for example, that named (parent) Defendant,  
7 Wynn Resorts, Ltd., was responsible for the release of the February 6, 2018 public declaration  
8 announcing support for the disgraced and resigning CEO Steve Wynn, which injured the Plaintiffs  
9 and demonstrating control he wielded over the companies he founded, owned and controlled up to  
10 that point. The Board of Wynn Resorts Ltd declared its "collective heavy heart" in accepting  
11 wrongdoer and CEO Steve Wynn's resignation, applauding him as the "beloved leader." These Wynn  
12 Resorts, Ltd expressions of support of the wrongdoer contributed to the hostile work environment and  
13 retaliatory hostile work environment to which the Plaintiffs were subjected. ECF No. 106 at ¶ 49.

14 Plaintiffs' Second Amended Complaint also asserts that Defendant Wynn Resorts Ltd's Board  
15 Member (and CEO) Matt Maddox convened a meeting with Salon employees (including Plaintiffs)  
16 on March 14, 2018 to declare that he was "taking over." ECF No. 106 at ¶ 55. Plaintiffs' Second  
17 Amended Complaint also asserts that Wynn Resorts Ltd Board Member Patricia Mulroy (who holds  
18 no position of any kind with the subsidiary, Wynn LV LLC) issued a letter addressed to the Wynn  
19 Salon and Encore Salon employees. Posted in their Wynn Resorts Salon, it stated that if anyone had  
20 information regarding sexual harassment allegations, they should report the information to the parent  
21 company's Board of Directors' investigators. Employees were required to acknowledge reading Ms.  
22 Mulroy's letter on their employee portal. ECF No. 106 at ¶ 56; 58.

23 Thus, parent company and named Defendant Wynn Resorts, Ltd took a very active role in  
24 asserting itself into Plaintiffs' Salon workplace employment orbit. All of this (among many other  
25 allegations) indicates that parent corporation Wynn Resorts Ltd was operating in as far more than just  
26 a "thrice-removed" "parent" corporation capacity. There was clearly a singularity of operational  
27 control over Plaintiffs' workplace which is more than sufficient for the parent entity to be considered  
28 a joint employer along with the entity that issued Plaintiffs their paychecks.

Wynn Resorts, Ltd's dismissal motion is at odds with its disclosures and admissions about control made to the Massachusetts Gaming Commission in the investigation into the parent Wynn Resorts Ltd's improper handling of the allegations of sexual misconduct by Steve Wynn in Nevada, *the same allegations which give rise to and support this lawsuit*. In the 4/8/2019 post-hearing brief by the Massachusetts subsidiary, Wynn MA, LLC concedes that it was (Defendant) Wynn Resorts Ltd (the parent, not Wynn Las Vegas, LLC) which was handling the investigation about the allegations about Steve Wynn's sexual misconduct in The Wynn Resorts workplace. *See Exhibit 16*, Wynn MA, LLC's Post-Hearing Brief at p. 1. To salvage its Massachusetts gaming license to open Wynn's Encore Hotel and Casino in June, 2019, the Massachusetts subsidiary Wynn MA, LLC relied upon the exercise of control by its parent, Wynn Resorts Limited, to reassure Mass Gaming:

Over a period of time . . . Wynn Resorts' refreshed Board and its new executive team grasped the full extent of Stephen Wynn's actions and recognized that, due to the failures of several former executives to respond appropriately to complaints against Mr. Wynn, many of the victims of those actions felt powerless and without a voice. ***Wynn Resorts and its current executive and Board qualifiers have taken full responsibility for these failures.*** As Matt Maddox expressed in his opening statement, Wynn Resorts is deeply sorry that it failed to live up to its values and that, in doing so, it ***let its employees down***. As the record and testimony show, over the past year, Wynn Resorts, under Mr. Maddox's leadership, has taken drastic and meaningful measures to ensure that ***all its employees*** are protected, valued, and heard.

Ex. 16 at p. 1-2 (emphasis added). So here Mr. Maddox, who served at both entities, conceded that Wynn Resorts, Ltd, acting through him and others, was responsible and involved in the events which now give rise to this suit.

As set forth above, the 3/15/19 Mass Gaming *Investigative Report* provides the most compelling and undeniable proof of the interconnections and overlap of the two business entities, one of which is seeking dismissal in this action as if it had nothing to do with the injurious events occurring at the Wynn and Encore Salons in the Wynn Resort and Casino property in Las Vegas. Without any competent supporting evidence, and which would probably surprise Massachusetts gaming regulators, Wynn Resorts, Ltd's motion inaccurately insists it is merely an "indirect parent company" of Wynn Las Vegas, LLC. ECF No. 118 at p. 2. Drawing from Wynn's corporate disclosures to Mass Gaming, in their Second Amended Complaint, Plaintiffs are entitled to plausibly assert, for example, that the 3/15/19 Massachusetts Gaming Commission's *Investigative Report* confirmed that the parent



1 corporation, Wynn Resorts, Ltd, was not merely a “parent” company of Wynn Las Vegas, LLC, but  
2 that it “ultimately controlled” Wynn Las Vegas, LLC. ECF No. 106 at ¶ 11.

3 The case law provided by Wynn Resorts Ltd which relies or focuses on “indirect parent  
4 companies” thus has little applicability in this matter. See Wynn Resorts Ltd’s use of *Goff ex rel.*  
5 *Estate of Torango v. Harrah's Operating Co.*, 392 F. Supp. 2d 1244, 1245 (D. Nev. 2005). ECF No.  
6 118 at p. 6. There, the parent company was dismissed from an unjust enrichment action because the  
7 plaintiff failed to show that the parent defendant entity had any connection to the wrongful acts  
8 attributed to its subsidiaries. In contrast, the nine Judy Doe Plaintiffs have asserted that specific Wynn  
9 Resorts Ltd officials and executives (including Steve Wynn’s misconduct initially setting the stage,  
10 and then later, other executives, counsel and Board members) were directly involved with  
11 perpetuating the wrongful acts creating the hostile environment and retaliation in their Wynn Salon  
12 workplace. See also, Wynn Resorts Ltd’s cite to *Nat’l Convenience Stores, Inc. v. Fantauzzi*, 94 Nev.  
13 655, 658, 584 P.2d 689, 692 (1978) and the contention that *Fantauzzi* involved a dismissal of a parent  
14 company. ECF No. 118 at p. 6. That case involved an analysis of whether an employee was acting  
15 in the scope of employment while committing a tortious act. It did not involve the dismissal of a  
16 parent company. *Nat’l Convenience Stores, Inc.*, 94 Nev. at 659.

17 The Title VII case law offered by Wynn Resorts Ltd’s motion is distinguishable from this  
18 matter. In the case of *Ozkan v. Am. Casino & Entm't Properties, LLC*, No. 2:14-cv-187-JCM-GWF,  
19 2014 WL 4105065, at \*4 (D. Nev. Aug. 19, 2014), the Court dismissed a parent company because  
20 the plaintiff never alleged that the company participated or influenced the employment policies of the  
21 subsidiary. That is not the case here. These Judy Doe Plaintiffs have all alleged that (among other  
22 things) it was Wynn Resorts Ltd which learned of the impending media publication of reports about  
23 Steve Wynn’s misconduct, and then forced Salon employees into meetings on January 17, 2018 with  
24 Maurice Wooden (President of Wynn Las Vegas, LLC), who appeared with Troy Mitchum (HR  
25 Director of Defendant Wynn Las Vegas, LLC) and discouraged Salon employees (including  
26 Plaintiffs) from voicing their concerns to the media or internally. ECF No. 106 at ¶ 32-34.

27 On January 31, 2018, Salon employees, including some of the Judy Doe Plaintiffs, were forced  
28 to attend a small meeting where Mr. Wooden introduced wrongdoer Steve Wynn, who then

1 intimidated (and frightened) Salon employees present and ridiculed those who had spoken out about  
2 his sexual misconduct to the media. ECF No. 106 at ¶ 39-41. At that time, Steve Wynn was the  
3 Chairman and CEO of parent company Wynn Resorts Ltd. Numerous Wynn Resorts high-level  
4 executives and security lined the walls at this forced and injurious meeting. ECF No. 106 at ¶ 369.  
5 Discovery will uncover their identities and no doubt the fact that some were management executives  
6 with the parent company and some with the subsidiary. All were acting together as the people in  
7 charge and control of the Plaintiffs' workplace, The Wynn and Encore Hotels.

8 Similarly, Wynn Resorts Ltd's reliance on other cases is misplaced. In *Cummings v. United*  
9 *Healthcare Svcs.*, No. 2:13-cv-00479-APG-GWF, 2014 U.S. Dist. LEXIS 44789 at \*7-9 (D. Nev.  
10 Mar. 31, 2014), the plaintiff had only pled a sole conclusory allegation regarding defendants being  
11 parent/subsidiary companies of each other. In *Lopez v. Goldencorp USA Inc.*, No. 3:09-cv-00104-  
12 LRH-VPC, 2010 WL 325 7889 \*4-5 (D. Nev. Aug. 13, 2010), the claim asserted was alleging only a  
13 parent-subsidiary relationship between defendants. Finally, in *Nowick v. Gammell*, 351 F. Supp. 2d  
14 1025, 1035 (D. Haw. 2004), the plaintiff failed to assert that the defendant controlled the workplace  
15 where the alleged acts occurred. In contrast, Plaintiffs' Second Amended Complaint goes far beyond  
16 alleging that Wynn Resorts Ltd was merely the "parent" to a "subsidiary" Wynn Las Vegas. Similarly,  
17 Wynn Resorts Ltd's reliance on an unpublished 2005 Tenth Circuit case (*Florez v. Holly Corp.*, 154  
18 F. App'x 707 (10th Cir. 2005)) is misguided. That case dealt with the Tenth Circuit's "single  
19 employer" analysis instead of the Ninth Circuit's "joint employer" analysis. *See also, Anderson v.*  
20 *Pac. Mar. Ass'n*, 336 F.3d 924, 931 (9th Cir. 2003) (Title VII coverage applies to indirect employers  
21 when those employers discriminated against and interfered with the employees' relationship with their  
22 employers.").

23 Wynn Resorts Ltd's motion also cites to other cases that do not involve a direct or indirect  
24 employment relationship. One of those cases, *Foster v. Ruhrpumpen, Inc.*, 365 F.3d 1191, 1193 (10th  
25 Cir. 2004), involved a group of employees of one company attempting to hold another company liable  
26 for age discrimination because the other company provided an assessment of their need to be retained.  
27 *See also, Wynn Resorts Ltd's use of Feliciano v. Reger Grp.*, 2014 WL 6685412, at \*1 (E.D. Va.  
28 Nov. 25, 2014). This case involved a plaintiff assigned by her separate employer to support a federal

1 agency (which had no control over her employment terms or conditions) for discrimination. Wynn  
2 Resorts, Limited's motion also cited to *Morris v. Hartford Courant Co.*, 200 Conn. 676, 679, 513  
3 A.2d 66, 68 (1986) and quoted that case as saying "A wrongful termination case, it is axiomatic, must  
4 In any event, *Morris* has no applicability to this matter. It involved the question about whether a  
5 former employee could sue his former employer for wrongful termination for public policy wrongful  
6 termination after being falsely charged with criminal conduct.

7 Although not offered for precedential value, a number of recent cases in this and other district  
8 courts are instructive about the fact-intensive Title VII "joint employer" test to be undertaken to apply  
9 the Ninth Circuit's directive in *U.S. Equal Emp. Opportunity Comm'n v. Glob. Horizons, Inc.*, 915  
10 F.3d 631, 641 (9th Cir. 2019) - the element of control. Not surprisingly, this is usually done in motions  
11 for summary judgement where the employees have had a full and fair opportunity to discover and  
12 present facts and evidence about joint employment by more than one corporate entity over employees.  
13 Just two weeks ago, Judge Gordon denied the portion of a motion to dismiss on this very issue in *Haro*  
14 *v. KRM, Inc.*, No. 2:20-cv-02113-APG-DJA, 2022 WL 980249, at \*4 (D. Nev. Mar. 30, 2022), where  
15 the *pro se* plaintiff worked at Bouchon, a restaurant operated by parent TKRG through a subsidiary  
16 called KVP. The plaintiff alleged, among other facts, that he had complained to TKRG HR department  
17 about Bouchon activities, and that the policies applicable in the KVP/Bouchon workplace were  
18 promulgated by TKRG, the parent company, and that those policies said Bouchon employees could  
19 be fired for violations of TKRG's policies. Judge Gordon found this suggests the requisite element of  
20 control and the plaintiff's claim would survive dismissal. *Id.*

21 Also, in *Ramirez-Castellanos v. Nugget Mkt., Inc.*, 2020 WL 2770060, (E.D. Cal. May 28,  
22 2020) the Court denied summary judgment to the defendant-employer who had disputed plaintiff's  
23 facts showing control in a lengthy 3-page analysis. The Court ruled that "No one [*Global Horizons*]  
24 factor is decisive; 'all of the incidents of the relationship must be assessed and weighed.'" *Id.* at \*5.  
25 Further, the Court noted that the weighing of evidence about control matters, credibility  
26 determinations of witness testimony about those matters in an employment setting (each of which is  
27 unique) and the drawing of legitimate inferences from those facts are to be left for the jury, not the  
28 court, and therefore summary judgment was denied. *Id.* at \*5.

1 Similarly, in *Kinnebrew v. W. Wholesale Supply, Inc.*, 2021 WL 2581414, at \*5 (D. Idaho June  
 2 23, 2021) the District Court denied summary judgment to the defendant-employer in an ADA case  
 3 after analyzing four factors: 1. interrelated operations; 2. common management; 3. centralized control  
 4 of labor relations; and 4. common financial control. While some minor factors differ from this Judy  
 5 Does case, the court found, as this Court should find here, that “the line between the Companies’  
 6 functions, finances, management and operations is, in some respects, blurred and in other respects,  
 7 indistinguishable.” In *John v. Core Brace, LLC*, No. 4:20-cv-00071-BLW, 2021 WL 3172919 (D.  
 8 Idaho July 26, 2021), the district court denied summary judgment to the employer in a race  
 9 discrimination case using the *Global Horizons* common law agency test for the (holding company)  
 10 parent corporation’s<sup>8</sup> activities. Although differing slightly from this Wynn case on the payroll front,  
 11 there, the parent corporation issued and enforced the personnel policies, and the subsidiary and parent  
 12 worked together within a family of corporations, and the subsidiary’s upper management operated out  
 13 of the parent’s headquarters such that summary judgement was precluded by the existence of disputed  
 14 facts.

15 Wynn Resorts Ltd’s motion also seeks dismissal of Plaintiffs’ state law claims for negligent  
 16 hiring, training, supervision and retention; intentional infliction of emotional distress; false  
 17 imprisonment, and invasion of privacy based on the incorrect allegation that all of these claims are  
 18 “premised” on Plaintiffs establishing an employment relationship with Wynn Resorts Ltd. ECF No.  
 19 118 at p. 8. Plaintiffs did not necessarily limit their state law claims to apply only to Wynn Resorts  
 20 Ltd in the context of an “employer.” Although the undeniable fact of the employment situation lends  
 21 credence and weight to the coercive misuse of power, which Plaintiffs repeatedly alleged, their  
 22 Second Amended Complaint indicates that, in a more general way, the parent corporation’s employees  
 23 may be among the many bad actors providing negligent management services which harmed  
 24 employees of subsidiary Wynn Las Vegas, LLC. The plausibility of these assertions is demonstrated

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 26  
 27 <sup>8</sup> Including the special circumstances under *Watson v. Gulf & Western Industries*, 650 F.2d 990, 993  
 28 (9<sup>th</sup> Cir. 1991) where the parent is held liable for the Title VII violations of its wholly-owned  
 subsidiary when the parent participated in or influenced the employment policies of the subsidiary.  
*Id.* at fn. 7.

1 by the \$55 million in fines imposed by gaming enforcement officials on Wynn Resorts, Ltd for Wynn  
2 Resorts, Ltd's failure to do so.

3 Further, Wynn Resorts, Ltd provided no legal authority indicating that Plaintiffs are not  
4 permitted to sue Wynn Resorts, Ltd on these state law claims in the capacity of an "employer," where,  
5 as here, it appears that Wynn Resorts, Ltd, acting through its executives (such as Wynn Resorts, Ltd  
6 president Mark Schorr, Wynn Resorts, Ltd president Matt Maddox, and former Wynn Resorts, Ltd  
7 General Counsel Kimmarie Sinatra), exercised control over all aspects of the Wynn and Encore Hotels  
8 operations, including the Salons where Plaintiffs worked. Similarly, it is telling that it appears that  
9 Wynn Resorts, Ltd has provided no evidence that it did not provide management and human resources  
10 services which have now been found to be so lacking and which failed to protect the Plaintiffs in their  
11 Wynn and Encore Salon workplace.

12 Thus, with respect to Plaintiffs' Title VII claims and their state law claims, Wynn Resorts, Ltd  
13 should not be allowed to elude discovery about and the applicability of a "joint employer" analysis  
14 and resulting responsibility. Wynn Resorts, Ltd's motion relies heavily on other inapplicable, non-  
15 binding, or irrelevant legal authorities in support of its conclusory argument that an active parent  
16 corporate entity ( Wynn Resorts, Ltd) is immune because it is not the entity issuing Plaintiffs their  
17 paychecks so it cannot be deemed an "employer" of Plaintiffs for Title VII purposes. This argument  
18 holds no merit when a proper analysis is conducted into whether these Plaintiffs have alleged and  
19 shown with plausibility that Wynn Resorts, Ltd exerted *control* over them through its corporate culture  
20 and high-level executives (which is easily established). Exactly how attenuated the Plaintiffs'  
21 relationship was with each of the Defendants, and how distinct and different or distant Wynn Resorts,  
22 Ltd was from the Plaintiffs' workplace is a question of fact, as Plaintiffs have already lodged plausible  
23 claims through those admitted corporate connections, along with documented evidence attached to  
24 this opposition, showing Wynn Resorts, Ltd's heavy involvement in their workplace.

25 **C. THE DECLARATIONS SUBMITTED BY WYNN RESORTS, LIMITED LACK COMPETENCY**  
26 **AND SHOULD NOT BE CONSIDERED, AND ARE ALSO NOT DISPOSITIVE**

27 The "evidence" submitted by Wynn Resorts, Limited in support of its motion are two  
28 declarations, neither of which contain sufficient information to indicate that the declarants are

1 competent to be testifying to the matters stated therein, except perhaps to the authenticity of some  
2 corporate records. Moreover, it would be unfair to accept this untested, incompetent evidence at this  
3 stage for the purpose of dismissing a named corporate entity with demonstrated involvement in at  
4 least some of the actions and omissions which led to the harm suffered by the Plaintiffs.

5 The first declaration is from Alisha Balee, who declares that she is currently employed by  
6 Wynn Las Vegas, LLC as the “Executive Director of Legal.” ECF No. 118-1. Ms. Balee’s declaration  
7 gives no indication about how long she has been in her position, and her declaration only speaks in  
8 the present tense. As set forth in the Second Amended Complaint, many of the actors and individuals  
9 controlling or acting in the Plaintiffs’ Wynn and Encore Salon workplace which resulted in the  
10 discrimination and retaliation occurred in the 2015-2018 timeframe, and chief among the bad actors  
11 in that timeframe as a perpetrator was Steve Wynn so that when the media published reports in 2018,  
12 matters got worse for his past victims. Ms. Balee’s declaration provides no information about him,  
13 his prior corporate roles or the power and authority he exercised through Wynn Resorts, Ltd, of which  
14 he was the founder, largest shareholder, CEO and Chairman of the Board and the person who selected,  
15 promoted and carried out his wishes in the workplace that bore his name.

16 The second declaration is from Courtney Prescott, who declares that she is currently employed  
17 by Wynn Las Vegas, LLC as the “Executive Director of Human Resources.” ECF No. 118-2. Similar  
18 to Ms. Balee’s declaration, no indication is provided as to how long Ms. Prescott has been in her  
19 position. Ms. Prescott declares in a conclusory fashion that “[Wynn Resorts, Limited] was not the  
20 employer of any person who works at, or has worked at, The Salon at Wynn or The Salon at Encore.”  
21 *Id.* But no analysis was set forth as to how Ms. Prescott drew that conclusion, including any analysis  
22 on the joint employer theory and the elements of control that Wynn Resorts, Limited has exerted over  
23 Wynn Las Vegas, LLC over the years.

24 Tellingly, Ms. Prescott also does not disclose her reporting structure upwards, perhaps leaving  
25 out the fact about whether she, as the Wynn Las Vegas hotel property HR Director, does indeed report  
26 to a global or North American HR Director (who was Rose Huddleston) at the parent corporation  
27 level. Certainly, Massachusetts gaming regulators might be interested in knowing whether the  
28 reporting structure in the “Wynn.” (Ex. 5) is being followed or has been abandoned.



1           Crucially, neither declaration speaks to the actual operational interrelationship and interaction  
2 between the parent defendant (Wynn Resorts, Limited) and the subsidiary defendant (Wynn Las  
3 Vegas, LLC), even though Ms. Balee declares that they have “separate legal existences.” ECF No.  
4 118-1. Neither declaration addresses the control exercised within and among the corporate entities  
5 within this structure, nor between and among the persons who occupy positions of power and control  
6 in both of those entities (such as the now disgraced CEO and Chairman of the Board Steve Wynn did).  
7 Similarly, while Ms. Prescott’s declaration asserts in a conclusory fashion that “Wynn Las Vegas is  
8 employer for all persons working at The Salon at Wynn [and] The Salon at Encore,” her declaration  
9 fails to provide any foundation upon which she is competent to offer this evidence, aside from a mere  
10 payroll standpoint perhaps in her capacity as Executive Director of Human Resources, which again,  
11 is not dispositive.

12           Neither declaration addresses whether Wynn Resorts, Ltd exercises control in the ways which  
13 are repeatedly asserted in Plaintiffs’ Second Amended Complaint. Those factors are the ultimate test  
14 of whether Wynn Resorts, Ltd is liable for discrimination and retaliation under Title VII as the joint  
15 employer of Plaintiffs.

16           Lastly, neither declarant addresses any of the commonality of the persons operating and  
17 managing the two defendant entities who operate the hotel and casino operation known as the Wynn  
18 Resort Hotel and Casino and the Encore Hotel and Casino. The indisputable facts of interconnection  
19 and the same individuals holding similar positions in both corporate entities is set forth in the exhibits  
20 attached hereto, which Wynn Resorts, Ltd submitted in disclosures to Massachusetts Gaming  
21 regulators. This alone ought to be sufficient, at this stage, to adequately bolster and corroborate the  
22 numerous paragraphs in the Second Amended Complaint which assert that the same individuals hold  
23 positions of power, authority, and control in both entities so much so that both entities should remain  
24 as defendants in this suit at this time.

#### 25 **IV. CONCLUSION**

26           Based on the foregoing, this Court should deny Defendant Wynn Resorts Ltd’s motion to  
27 dismiss and joinder to Wynn Las Vegas, LLC’s motion to dismiss [ECF Nos. 118, 119] in their  
28 entirety. Alternatively, if the Court deems the factual allegations in the Second Amended Complaint



1 to be insufficient, Plaintiffs should be allowed to conduct limited discovery on these control matters,  
2 including but not limited to deposing declarants Ms. Balee and Ms. Prescott and others, to ascertain  
3 and challenge Wynn Resorts Ltd's unsupported assertions of non-control and non-connection between  
4 these two corporate entities and to file an amended complaint offering even more evidence of control  
5 and connection sufficient to satisfy the joint employer test.

6 Respectfully submitted this 15th day of April, 2022.

7 **MAIER GUTIERREZ & ASSOCIATES**

8 */s/ Danielle J. Barraza*

9  
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16 *Attorneys for Plaintiffs*

**DECLARATION OF ATTORNEY KATHLEEN J. ENGLAND, ESQ.**

Kathleen J. England, Esq., attorney for Plaintiffs, hereby declares the following under the penalties of perjury. I am making this Declaration for the authentication of the exhibit enclosed herein.

**Exhibits 1-11** all contain a true and correct copy of select pages from the Appendix of documents that the Massachusetts Gaming Commission referred to in its March 15, 2019 *Investigative Report Regarding Ongoing Suitability of Wynn MA, LLC*, which are all being submitted as part of an admissible public record pursuant to NRS 51.155.

**Exhibit 12** contains a true and accurate copy of portions of the actual March 15, 2019 *Investigative Report Regarding Ongoing Suitability of Wynn MA, LLC*, which is being submitted as part of an admissible public record pursuant to NRS 51.155.

**Exhibit 13** contains a Wynn Entity Organizational Chart, which was compiled from NV Secretary of State Filings as they existed as of January 13, 2020. The true and accurate underlying Secretary of State documents as they existed on January 13, 2020 follow behind that Wynn Entity Organizational Chart.

**Exhibit 14** contains a true and accurate copy of a 2016 EEO-1 Report filed by Wynn Resorts Ltd.

**Exhibit 15** contains a true and accurate copy of select pages of the Massachusetts Gaming Commission, 4/3/2019 Adjudicatory Hearing Transcript, which is being submitted as part of an admissible public record pursuant to NRS 51.155.

**Exhibit 16** contains Wynn Resorts, Ltd.'s Post-Hearing Brief submitted to the Massachusetts Gaming Commission, which is being submitted as part of an admissible public record pursuant to NRS 51.155.

Respectfully submitted this 15th day of April 2022:

/s/ Kathleen J. England

KATHLEEN J. ENGLAND  
Counsel for Plaintiffs

**Exhibit Index**

<b>Exhibit No.</b>	<b>Description</b>
Exhibit 1	April 3, 2018 Wynn Resorts Memo to All Employees
Exhibit 2	Wynn Company Employee List
Exhibit 3	Resolutions of the Board of Directors of Wynn Resorts, Limited
Exhibit 4	June 8, 2018 Kirkland & Ellis LLP Presentation to Mass Gaming Commission
Exhibit 5	Wynn Preventing Harassment and Discrimination Policy
Exhibit 6	Wynn Flow Chart of Complaints and Investigations
Exhibit 7	Wynn Permitted Disclosures Policy
Exhibit 8	Wynn Personal Relationships and Potential Conflicts of Interest
Exhibit 9	May 18, 2020 Memo from Kim Sinatra Regarding Use of Spa and Salon Services
Exhibit 10	Wynn Resorts, Ltd Compliance Plan, select pages
Exhibit 11	Wynn Employee Interaction with Guest and Other Third Parties Policy
Exhibit 12	Massachusetts Gaming Commission, Investigative Report Regarding Ongoing Suitability of Wynn MA, LLC, select pages.
Exhibit 13	Wynn Entity Organizational Chart, Compiled from NV Secretary of State Filings as they existed as of January 13, 2020
Exhibit 14	2016 EEO-1 Report filed by Wynn Resorts Ltd.
Exhibit 15	Massachusetts Gaming Commission, 4/3/2019 Adjudicatory Hearing Transcript, select pages.
Exhibit 16	Wynn Resorts, Ltd.'s Post-Hearing Brief

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2022, I served a true and correct copy of the foregoing:  
**PLAINTIFFS' OPPOSITION TO DEFENDANT WYNN RESORTS, LIMITED'S: (1)**  
**MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT [ECF NO. 118];**  
**OR (2) IN THE ALTERNATIVE, JOINDER TO DEFENDANT WYNN LAS VEGAS, LLC'S**  
**MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT [ECF NO. 119]**  
through the CM/ECF system of the United States District court for the District of Nevada upon the  
following:

Deverie J. Christensen, Esq.  
Joshua A. Sliker, Esq.  
JACKSON LEWIS P.C.  
300 S. Fourth Street, Suite 900  
Las Vegas, Nevada 89101  
*Attorneys for Defendants Wynn Resorts, Limited and Wynn Las Vegas, LLC*

/s/ Danielle Barraza

An Employee of MAIER GUTIERREZ & ASSOCIATES